

PT 03-13

Tax Type: Property Tax

Issue: Education Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**GLEN ELLYN CONSOLIDATED
SCHOOL DISTRICT NO. 89,
APPLICANT**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

Nos: 01-PT-0082

(00-22-303)

P.I.N: 05-26-306-007

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. James S. Levi and Robert A. Kohn of Hodges, Loizzi, Eisenhammer, Rodick & Kohn on behalf of the Glen Ellyn Consolidated School District No. 89, (the “applicant” or the “school district”); Mr. Robert Rybica, Assistant State’s Attorney of the County of DuPage, on behalf of the DuPage County Board of Review (the “Board”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This proceeding raises the following issues: first, whether real estate identified by DuPage County Parcel Index Number 05-26-306-007 (the “subject property”) was owned by a duly qualified “school” or “school district,” as required by Sections 15-35 and 135 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (the “Code”); second, whether the subject property qualifies for exemption under the “leaseback” provision contained in Section 15-35(e) of the Code; and third, whether the subject property was “leased ... with a view to profit,” in violation of Sections 15-35 and 135 during the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed a Petition for Tax Exemption with the Board on September 26, 2000. Dept. Ex. Nos. 2, 3. The Board reviewed Applicant's Petition and thereafter recommended to the Department that the subject property be exempt as of September 4, 2000. *Id.* The Department, however, denied the requested exemption *in toto* under terms of a determination dated October 4, 2001, which found that the subject property is not in exempt ownership. Dept. Ex. No. 1. Applicant filed a timely appeal of this denial and thereafter presented evidence at a formal administrative hearing, at which the Board and Department also appeared. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial determination be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership. Dept. Ex. No. 1.
3. The subject property is located in Glen Ellyn, Illinois and improved with a two story administrative office building. Dept. Ex. No. 1.
4. Applicant is a duly constituted public school district, organized pursuant to the School Code, 105 ILCS 5/1-1, *et seq.* Applicant Ex. No. 2; Administrative Notice.
5. Applicant's powers, as enumerated in the School Code, include, *inter alia*, authority: (a) to lease, for a period not exceeding 99 years, any buildings, rooms, grounds and appurtenances to be used by the applicant for school-related purposes [105 ILCS 5/10-22.12]; (b) to pay for the use of any property it so leases in

- accordance with the terms of the lease [*id.*]; (c) to borrow money and issue bonds [105 ILCS 5/10-22.14]; and, (d) to levy taxes [105 ILCS 5/11A-9]. Administrative Notice.
6. Section 5/17-2 of the School Code, 105 ILCS 5/17-2, imposes strict limits on the purposes for which applicant may levy taxes and the tax rates applicant may impose. Administrative Notice.
 7. Section 5/19-1 of the School Code, 105 ILCS 5/19-1, provides, in relevant part, that applicant is prohibited from incurring indebtedness that exceeds a specified percentage of the value of all taxable real estate located within its boundaries unless 2/3 of the voters within the school district approve a proposition, at a lawfully conducted election, for the issuance of bonds that are to be used to fund the construction of additional school facilities. However, any additional indebtedness that the school district incurs when issuing bonds pursuant to such an approved proposition cannot, when combined with the school district's existing indebtedness, exceed 15% of the value of the taxable real estate within its boundaries. Administrative Notice; Tr. p. 130.
 8. Applicant leases the subject property from the titled owner thereof, LaSalle National Bank, National Association, (the "Bank") pursuant to the terms of a lease agreement (the "lease") dated September 15, 1999. Applicant Ex. No. 2.
 9. Applicant entered into this lease because it did not have the cash resources to fund an immediate purchase of the subject property. Tr. pp. 14-16, 28-29.

10. The lease: (a) names the Bank as lessor and applicant as lessee; and, (b) runs for a term of 99 years that commences September 15, 1999 and ends September 15, 2098. Applicant Ex. No. 2.
11. One of the stated purposes of the lease is to enable applicant to acquire ownership of the subject property, and such improvements as applicant may construct thereon, by means of a financing arrangement whereby the Bank issues certain “Certificates of Participation” (the “Certificates”)¹ evidencing “fractionalized ownership interests in Base Rentals” payable by the applicant under the lease.²
12. The lease further provides, *inter alia*, that:

This Lease is executed in part *to induce the purchase by others*³ of the Certificates and for the further securing of the Certificates, and, accordingly, as long as any Certificates are outstanding, all respective covenants and agreements of the parties herein contained are hereby declared to be for the benefit of the owners from time to time of the Certificates and the [Bank in its capacity as] Trustee only in accordance with the provisions of the Trust Agreement. The Lease shall not be deemed to create any right in any person who is not a party (other than the permitted successors and assigns of a party) and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto), except in each case the owners from time to time of the Certificates and the Trustee. (emphasis added).

Id.

13. The lease defines “Base Rentals,” as consisting of:

1. According to the lease, the Bank issues these certificates pursuant to a trust agreement (“trust agreement”), which applicant did not submit into evidence, between “the Lessor [Bank] as (Trustor) and LaSalle Bank National Association, as Trustee ...[.]” Applicant Ex. No. 2.

2. The Bank applies proceeds from the principal component of such Base Rentals to the purchase of the Certificates, which it then sells to unidentified outside investors under terms of the trust agreement. Applicant Ex. No. 2.

3. The identity of these “others” is not specified in the record.

- A. Principal payments in the aggregate amount of \$2,000,000.00, which amounts are payable in annual installments ranging from \$85,000.00 to \$190,000.00 that must be paid on January 25 of each calendar year between January 25, 2005 and January 25, 2019;⁴
- B. Interest payments in the aggregate amount of \$1,502,797.22, which amounts are payable in biannual installments ranging from \$101,046.49 to \$5,225.00, that must be paid on July 25 and January 25 of each calendar year between July 25, 2000 and January 25, 2019;⁵ and,
- C. Interest on overdue principal payments that the applicant may make throughout the term of the Lease, if any.

Id.

- 14. The lease further specifies that applicant shall pay the following items as “Additional Rentals” throughout the term of the lease, whenever necessary or appropriate:
 - A. The annual fee due payable to the Bank under terms of the trust agreement;
 - B. Reasonable fees and charges that the Bank or other entities may impose or incur for services connected with the administration of the Certificates;

4. The amount of each annual principal payment, which facilitates purchase of the Certificates, increases by \$5,000.00 each year of the term so that applicant pays \$85,000.00 on January 25, 2005, \$90,000.00 on January 25, 2006, \$95,000.00 on January 25, 2007 and so forth until it pays \$190,000.00 on January 25, 2019. For further details, *see*, Applicant Ex. No. 2.

5. The amount of interest that applicant pays decreases with time over the term of the lease, so that applicant pays \$101,046.49 on July 25, 2000, \$57,558.13 between January 25, 2001 and January 25, 2005, \$54,583.13 between July 25, 2005 and January 25, 2007 and so forth until applicant makes two payments of \$5,225.00 on July 25, 2018 and January 25, 2019. For further details, *see*, Applicant Ex. No. 2.

- C. Reasonable fees and charges that the Bank may impose for “extraordinary services,” (such as those necessary to defend its status as titled owner of the subject property), that the Bank may perform in its capacity as trustee under the Trustee Agreement or lessor under the lease;
- D. Reasonable fees and out of pocket expenses incurred by the Bank, which the lessee would not otherwise be obligated to pay under terms of the lease, including but not limited to all costs of legal and accounting services performed for the Bank in connection with the lease;
- E. Any maintenance, operation and repair costs associated with the subject property;
- F. Costs of taxes, governmental charges and assessments levied against the subject property, including property taxes;
- G. Any amount of interest that applicant may incur in the event it should become delinquent on any of its financial obligations under the lease;
- H. The sum of \$1.00, which is payable once per year on January 1 of each year from January 1, 2020⁶ until termination of the 99-year lease term.

Id.

- 15. The lease, specifically states, *inter alia*, that the applicant, as lessee, retains a non-cancelable option to purchase the subject property throughout the term of the lease, provided that the applicant is not in default of any of its obligations thereunder. *Id.*
- 16. The lease further provides, *inter alia*, that:

6. January 1, 2020 marks the start of the calendar year following the year in which the Certificates become paid in full through payment in full of the principal component of Base Rentals.

The Lessee may, if no Event of Default has occurred and is then continuing hereunder, and if to the extent permitted by State law on such date, purchase the Leased Property subject to the terms hereof by paying to the Lessor the Option Price (i) on any Option Prepayment Date, or (ii) on Certificate Payment Date on which the Certificates then outstanding are paid or prepaid in full and the lien of the Trust Agreement discharged in accordance [with the method specified in the Trust Agreement]. The Option Price for the Leased Property to be paid by the Lessee to exercise the option provided herein shall be an amount equal to the sum \$10.00.

The Lessee agrees to take all necessary procedural or legal actions, if any, to enable the Lessee to purchase the Leased Property at the end of the Lease Term, if permitted by then applicable law, subject to earlier expiration or termination of the Lease Term [by virtue of: (i) Applicant's deposit of the purchase price for the subject property with the Lessor, following full payment of all Base and Additional Rentals then due; or, (ii) Applicant's lawful exercise of its option to purchase the subject property]. Subject to the Lessee's satisfactory compliance with [all applicable] requirements or procedures, the Lessee shall then purchase the Leased Property from the Lessor for a purchase price of \$10.00, whereupon title to the Leased property shall vest in the Lessee...[.]

Id.

17. The lease also contains the following relevant terms and conditions:

SUBJECT	TERMS and CONDITIONS
Use	<ul style="list-style-type: none"> Applicant shall use the subject property solely for school or school administration purposes throughout the term of the lease.
Parties' Intent as to Ownership	<ul style="list-style-type: none"> "It is the Lessor's and the Lessee's intention that this lease not constitute a 'true' lease for federal income tax purposes, and therefore, it is the Lessor's and the Lessee's intention that the Lessee be considered the owner of the leased Property for federal income tax purposes."
Lessee's Ability to Cancel Lease	<ul style="list-style-type: none"> Lessee cannot cancel the lease at any point during the lease term except through lawful exercise of its option to purchase the

	subject property.
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SUBJECT (CONT'D.)	TERMS and CONDITIONS
Federal Income Tax Covenant	<ul style="list-style-type: none"> Applicant shall not take any action under the lease that adversely affects or otherwise impairs the “excludability from gross income for federal income tax purposes⁷ of the interest component of Base Rentals payable as Distributions with respect to the Certificates.”
Lessee’s Obligation to Pay Base and Additional Rentals When Due	<ul style="list-style-type: none"> Applicant shall pay all Base Rentals when due and shall not withhold any such payment pending final resolution of any disputes between itself and the Bank; The lessee’s obligation to pay Base and Additional Rentals “shall

7. This exclusion arises pursuant to Section 103 of the Internal Revenue Code (26 U.S.C.A. §103), which states as follows:

§ 103. Interest on State and local bonds

- (a) Exclusion.--Except as provided in subsection (b), gross income does not include interest on any State or local bond.
- (b) Exceptions.--Subsection (a) shall not apply to –
 - (1) Private activity bond which is not a qualified bond.--Any private activity bond which is not a qualified bond (within the meaning of Section 141).
 - (2) Arbitrage bond.--Any arbitrage bond (within the meaning of section 148).
 - (3) Bond not in registered form, etc.--Any bond unless such bond meets the applicable requirements of section 149.
- (c) Definitions.--For purposes of this section ...
 - (1) State or local bond.--The term "State or local bond" means an obligation of a State or political subdivision thereof.
 - (2) State.--The term "State" includes the District of Columbia and any possession of the United States.

26 U.S.C.A. §103.

The federal tax benefits that the Certificate holders receive from this exclusion shall hereinafter be referred to as the “federal tax benefits provided for in the lease.”

	be absolute and unconditional under any and all circumstances subject to the terms and conditions of this Lease ...[;]”
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SUBJECT (CONT'D.)	TERMS and CONDITIONS
Lessee's Obligation to Pay Base and Additional Rentals When Due (Cont'd.)	<ul style="list-style-type: none"> The lessee's obligation to pay Base and Additional rentals shall not be subject to abatement, deduction or setoff for any reason or cause whatsoever, including, without limitation: (a) non-performance by the lessor; (b) damage to or destruction of the subject property; (c) construction delays; or, (d) the institution of bankruptcy, insolvency, reorganization or other similar proceedings by or against the lessor or the lessee; The Bank shall not be liable for, and applicant shall not be permitted any diminution in or abatement of its rental obligations, for any loss or damage to the subject property that results from any cause, including but not limited to vermin, rain, snow, storms or any latent defect in the subject property.
Lessee's Financial Obligations	<ul style="list-style-type: none"> Applicant recognizes that the financial obligations contained in the lease shall constitute a direct general obligation “of the Lessee payable from any funds legally available and annually appropriated therefor[;]” Applicant and the Bank recognize that “there is no statutory authority for the levy of a separate tax in addition to other taxes of the Lessee or the levy of a special tax unlimited as to rate or amount to pay such [Base and Additional] Rentals.”
Prepayment	<ul style="list-style-type: none"> Applicant retains the right to prepay any Base Rentals due under the lease “for purposes of pre-paying the Certificates, in whole or in part.”
Lessee's Right to Make Alterations or	<ul style="list-style-type: none"> The Lessee shall have the right during the term of the lease to make any alterations, additions or improvement of any kind, structural or otherwise, as it shall deem necessary or desirable, to the subject property, and also, to attach fixtures, structures, or

Improvements to the Subject Property	signs and to affix personal property to the [subject property]; <i>provided however</i> , that no such alteration, addition or improvement shall materially reduce or otherwise materially adversely affect the value of the [subject property] or impair the federal tax benefits provided for in the lease.
Rights in the Event of Property Damage	<ul style="list-style-type: none"> If, at any point during the term of the lease: (a) the subject property should become damaged or destroyed in whole or in part; or, (b) any part of said property should be taken pursuant to a lawful <i>eminent domain</i> proceeding; or, (c) there should arise a material defect in the acquisition and construction of said property; or, (d) title to or the use of any portion of the subject property should become lost due to a defect in title thereto, then applicant shall continue to pay Base and Additional Rentals as provided in the lease, and also take such action as it shall deem necessary or appropriate to repair and replace whatever damage may have been done to the subject property or whatever defect may have arisen in the title thereto.

SUBJECT (CONT'D.)	TERMS and CONDITIONS
Lessee's Rights of Sale, Abandonment and/or Destruction	<ul style="list-style-type: none"> Without the consent of the lessor or the Certificate owners, the lessee may at any time or times sell, abandon or destroy any portion of the leased property upon a finding by the lessee's governing body that such sale, abandonment or destruction: (a) is in the lessee's best interest and will not materially adversely affect school operations in the leased Property; and, (b) will not adversely affect the federal tax benefits provided for in the lease. However, any such sale, abandonment or destruction that applicant undertakes pursuant to this provision shall not result in any reduction in rentals payable under this lease.
Rights to Personal Property And Fixtures	<ul style="list-style-type: none"> All of the applicant's equipment and other personal property that it places or installs on the subject property, which property is: (a) not a fixture; or, (b) not paid for with the proceeds from the sale of the Certificates shall remain the sole property of the applicant. As such, the Bank shall have no interest in any such property, which applicant may modify or remove at any time provided that applicant pays for any damage caused by the removal;

	<ul style="list-style-type: none"> • All fixtures, as well as all alterations and improvements to the subject property that: (a) are not personal property of the applicant; or, (b) that are paid for with proceeds from the Certificates, shall become property of the Bank as part of the leased property, subject to all terms and conditions set forth in the lease and trust agreement.
Duties and Expenses of Management, Maintenance And/or Repair	<ul style="list-style-type: none"> • Applicant shall, at its own expense, maintain, manage and operate the subject property and all improvements thereon in good order, condition and repair, ordinary wear and tear excepted; • In connection with these duties applicant shall provide or cause to be provided: (a) all security, custodial and janitorial services; (b) power, gas, telephone, electric, light, heating, water and other public utility services; and, (c) such insurance policies (i.e. casualty, liability, workers compensation, etc.) as are customarily maintained for similar properties, with the proceeds of any such policies payable to the lessee; • Neither the Bank nor any of the Certificate holders⁸ shall have any obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of the subject property during the term of the lease. Accordingly, applicant is under an affirmative duty to take good care of the subject property and shall suffer no waste or injury thereto, ordinary wear and tear excepted.

8. The identity of any of these Certificate holders is not disclosed in the record.

SUBJECT (CONT'D.)	TERMS and CONDITIONS
Duties and Expenses of Management, Maintenance And/or Repair (Cont'd.)	<ul style="list-style-type: none"> • The Bank, as lessor, shall not incur any liability for failure of the lessor or others to make any repairs, alterations, additions or improvements in or to any portion of the subject property, or in or to the fixtures, appurtenances or equipment thereof; • Applicant shall be solely responsible for bearing the risk of maintaining any and all personal property that it causes to be placed on the subject property, including any such property that it places in the custody of its employees or agents. As such, neither the Bank nor any of the Certificate owners shall have any liability to the applicant for any loss thereof or damage thereto from any cause whatsoever.
Lessor's Assignment Rights	<ul style="list-style-type: none"> • The Bank, as lessor, shall, at the direction and with the consent of the applicant-lessee, assign its right, title and interest as lessor in, to and under this lease, and any other documents executed with respect to this lease in whole or in part as provided in "the Assignment."⁹
Lessee's Assignment Rights	<ul style="list-style-type: none"> • Applicant shall not assign the lease, or any part of its interest therein, to any third party without first obtaining prior written consent from the Bank. Nor shall applicant pledge, assign, mortgage, sublet or transfer any part of its interest voluntarily or by operation of law without first obtaining written consent from the Bank. • Any assignment or sublease that applicant makes after receiving such written consent shall not: (a) relieve applicant of liability for or, excuse applicant from actually performing on, any of the covenants and conditions that it is required to perform under the lease; and/or, (b) affect the validity of the lease itself; and/or (c) change the character or the use of the subject property so as to either: (i) make the use or uses ones that are not then permitted by applicable law; or, (ii) impair the federal tax benefits provided for

9. The lease contains numerous references to an "Assignment." However, the lease does not identify which "Assignment" is being referenced. Nor does the lease contain any definition of the term "Assignment." Even if it did, applicant did not submit into the hearing record whatever "Assignment" is being referenced.

	in the lease.
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SUBJECT (CONT'D.)	TERMS and CONDITIONS
Specific Prohibitions Affecting Assignment and Other Related Rights	<ul style="list-style-type: none"> • Until the Certificates are paid in full, and unless the Bank shall otherwise consent in writing, applicant agrees not to: <ul style="list-style-type: none"> (a) Create, incur or permit to exist any mortgage, deed of trust, security interest (whether possessory or nonpossessory) or other encumbrance of any kind (including without limitation the charge upon property purchased under conditional sale or other title retention agreement) upon the leased property other than: (i) liens for taxes not delinquent or being contested as permitted under terms of the lease; (ii) liens in connection with workers' compensation, unemployment insurance or social security obligations; (iii) mechanics' or other similar type liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in appropriate legal proceedings; (iv) liens in favor of the Bank that arise from transactions described in the lease; and, (v) other specifically defined "Permitted Encumbrances[;]"¹⁰ or, (b) Enter into or consent to any amendment to any of the documents contemplated hereby, except as may be required to preserve the federal tax benefits provided for in the lease; • "Except with respect to the assignment, sale, transfer and conveyance made by the lessor, at the direction and with the consent of the lessee, to the Trustee under the Assignment, the lessor will not assign, sell, transfer or convey the Base Rentals, Option Price, or any of its other rights under the lease and will not sell, assign, mortgage or encumber the leased property. <i>All moneys received by the lessor hereunder and by the Trustee under the Trust Agreement for the owner or owners of the Certificates will be applied for the benefit of such owner or owners.</i>" (emphasis added)

10. The detailed definition of "Permitted Encumbrances" set forth in the lease is not relevant for present purposes. However, in general, the "Permitted Encumbrances" include mechanic's, laborer's, and other similar-type liens. Applicant Ex. No.2.

Events of Default	<ul style="list-style-type: none"> The following occurrences constitute events of default on the part of the lessee: <ul style="list-style-type: none"> (a) Failing to pay Base Rentals; (b) Failing to budget, appropriate and maintain sufficient funds to pay all rentals due under the lease; (c) Failing to pay any Additional Rentals (including any Additional Rentals due for property taxes) for a period of 30 days after the lessee receives written notice of the delinquency;
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SUBJECT (CONT'D.)	TERMS and CONDITIONS
Events of Default (Cont'd.)	<ul style="list-style-type: none"> (d) Failing to observe any other covenant, condition or agreement that is part of the lease for a period of 30 days after the lessor issues written notice: (i) specifying such failure; (ii) identifying such failure as an "event of default;" and, (iii) requesting that the lessor take appropriate remedial action; (e) Instituting any proceedings under any bankruptcy, insolvency, reorganization or other similar type law; (f) Having a receiver or other similar type official appointed for the lessee or any of its property; and, (g) Falsifying any statement or document that materially affects a warranty or representation contained in or made in connection with any of applicant's obligations under the lease.
Lessor's Remedies in the Event of Default	<ul style="list-style-type: none"> The Bank may exercise any or all of the following rights upon occurrence of an "event of default": <ul style="list-style-type: none"> (a) Seek specific enforcement from a court of competent jurisdiction of any lease term that is breached by an "event of default"; and/or, (b) Undertake appropriate collection proceedings as to any unpaid interest or principal or interest components of Base Rentals; and/or, (c) Pursue any other remedy available to the lessor at law or equity.

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Id.

18. The lease also contains certain terms and conditions pertaining to a “Project”¹¹ that the Bank is to undertake in its capacity as lessor. However, applicant did not submit any documentation establishing the exact nature of this “Project[.]” *Id.*

CONCLUSIONS OF LAW:

I. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-35 and 15-135 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, (the “Code”), which provide, in relevant part for exemption of the following:

200/15-35. Schools

§15-35. Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any State of the United States. Also exempt is:

11. The term “Project” is defined in the lease as meaning “the acquisition, construction and installation of the Leased [subject] Property pursuant to Plans and Specifications.” Applicant Ex. No. 2.

The term “Plans and Specifications” is defined in the Lease as meaning “the plans and specifications prepared for and showing the Project, as and when they are approved by the Lessee, the same being duly certified by [one or more duly authorized agents of the lessee], which plans and specifications shall be on file at the principal office of the Lessee and shall be available for reasonable inspection by the Lessor and its duly authorized representatives.” *Id.* However, applicant did not submit the “Plans and Specifications” or any other documents relating to the “Project” into evidence.

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities, and school owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

(e) Property owned by a school district. The exemption under this subsection is not affected by any transaction in which, for purposes of obtaining financing, the school district, directly or indirectly, leases, or otherwise transfers the property to another for which or whom property is not exempt and immediately after the transfer enters into a leaseback or other agreement that directly or indirectly gives the school district a right to use, control and possess the property. In the case of a conveyance of the property the school district must retain an option to purchase the property at a future date or, within the limitation period for reversioners, the property must revert back to the school district.

35 ILCS 200/15-35, 35(b), 35(c), 35(e).

200/15-135. School districts and community college districts.

§15-135. School districts and community college districts. All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.

35 ILCS 200/15-135.

Like all statutes exempting real estate from taxation, Sections 15-35 and 135 are to be strictly construed, with all debatable questions resolved in favor of taxation. People

Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

II. Question Presented and Analytical Framework

A. Overview

The precise debatable question presented herein is whether property that is leased to a duly constituted school district (a) ostensibly for purposes of enabling the school district to obtain appropriate financing but that is also (b) leased for purposes of providing unidentified third party investors with certain federal tax benefits, is “leased ... with a view to profit” in violation of Sections 15-35 and 135. For the following reasons, I conclude that this lease is one that leases investment property for profit.

Whether real estate is “leased with a view to profit” depends in the first instance on the intent of the owner in using the property. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 922 (1st Dist. 1988). Thus:

... it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, “with a view to profit,” the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose, the tax-exempt status of the property continues even though the use may involve an incidental production of income.

Children’s Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). *See also*, Victory Christian Church, *supra*, at 922.

In order to apply this test, “one must look first to see if the owner of the real estate is entitled to exemption from property taxes.” Victory Christian Church, *supra* at 922. If

the owner is so exempt, then “one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed.” *Id.* Hence, property owned by one or more private individuals does not qualify for exemption even though the owner or owners lease the property to tax exempt entities that use the property for exempt purposes. *Id.*, at 921-923 (real estate owned by a private individual who leased the property to the appellant Church held non-exempt even though the Church used the property for unspecified religious purposes); Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 947-948 (2nd Dist. 1987) (real estate owned by private individuals who leased the property to the College held non-exempt even though the College used the property for student housing).

B. Does the “Owner” Qualify as a Tax Exempt Entity?

All of the parties agree that the named titleholder of this subject property, the Bank, is not a tax-exempt entity. However, they do not agree as to whether it is the Bank or the applicant-school district that qualifies as “owner” of the subject property for present purposes. Applicant correctly points out that “[r]evenue collection ... is concerned not with the refinements of title but with the realities of ownership.” Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062, 1069 (5th District, 1981) (“Booker”); People v. Chicago Title and Trust, 75 Ill.2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). As such, the “owner” of real estate for property tax purposes is not necessarily synonymous with the person or entity that holds legal title to the property. Booker, *supra*; People v. Chicago Title and Trust, *supra*. Rather, the “owner” is the person or entity that in practical terms: (1) exercises rights of control over the property; and, (2) derives benefits therefrom. *Id.*

Factors to be employed in determining “ownership” for property tax purposes include whether the written instrument that creates and governs the respective property interests: (1) makes the purported “owner” liable to pay any property taxes assessed against the property (Wheaton College, *supra*, at 946; Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 61 (1978)); (2) enables that “owner” to receive any tax benefits that the instrument provides (Wheaton College, *supra*, at 948); (3) allows the “owner” to obtain a “substantial monetary interest” in the property by making a sizeable down payment, followed by regular monthly payments, both of which are applied toward the price at which the “owner” will eventually purchase the property (Christian Action Ministry, *supra*, at 54, 61; *see also*, Community Mental Health Council v. Department of Revenue, 186 Ill. App.3d 73, 81 (1st Dist. 1989)); (4) permits the “owner” to, or prohibits the “owner” from, removing any existing structures on the property or constructing new ones thereon (Wheaton College, *supra*, at 948; Cole Hospital v. Champaign County Board of Review, 113 Ill. App.3d 96, 101 (4th Dist. 1983)); (5) authorizes the “owner” to fully and freely alienate, transfer or (in an appropriate case) sublease the property throughout the term of the instrument (Wheaton College, *supra*, at 948); and, (6) provides that the “owner” will be able to either: (a) purchase the property for no additional consideration at the conclusion of a specified term¹² (Wheaton College, *supra*, at 948); or, (b) have title to the property transferred to

12. Compare Christian Action Ministry, *supra*, where the appellee ministry was held to be the owner for property tax purposes under terms of a contract for deed which provided, *inter alia*, that the ministry would receive title, with no additional consideration required, as soon as it made all installment payments that were due under the contract (*id.* at 54) with Wheaton College, *supra*, where the appellant College was held *not* to be the “owner” for property tax purposes under terms of a 30 year lease that required, *inter alia*, the College would have the right to repurchase the property for \$106,000.00 at the conclusion of the lease term. *Id.* at 948.

the “owner” without further cost upon the occurrence of a specific condition precedent, such as the retirement of a mortgage. Booker, *supra*, at 1066.

In applying these criteria, I am required to make a fair reading of the entire lease document as a whole. Forest Preserve District of DuPage County v. Department of Revenue, 266 Ill. App.3d 264, 270 (2nd Dist. 1994). Consequently, mere recitals as to the document’s purpose are not determinative. *Id.* Rather, it is the cumulative effect of all relevant provisions in establishing which party effectively exercises control over the property and derives benefits therefrom that is decisive. Wheaton College, *supra*, at 948.

A fair reading of the lease document as a whole fails to demonstrate by the requisite clear and convincing evidence (People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)) that applicant qualifies as the “owner” of the subject property for present purposes. The lease terms that control the rights of applicant, as lessee, and the Bank, as lessor, are clear that applicant cannot assign, encumber or otherwise alienate its interest in the subject property in any manner that jeopardizes the federal tax benefits provided to third parties who have invested funds with the Bank for the specific purpose of reaping these financial benefits. Consequently, applicant is not truly at liberty to alienate its interest in that property in a full and free manner that is demonstrative of “ownership.” Wheaton College, *supra*, at 948.

Furthermore, applicant’s rights to make alterations to the subject property and remove structures therefrom are, under the relevant lease terms, restricted in much the same manner as applicant’s rights of alienation and sale. Therefore, it cannot be said that the lease provides applicant with these incidents of ownership.

This conclusion is consistent with the holding in Wheaton College, *supra*, where the court held that the appellant College did not qualify as the “owner” for property tax purposes under terms of a 30 year lease which provided, *inter alia*, that the College enjoyed certain incidents of ownership, including the right to remove existing structures from the property and the right to sublease it. Wheaton College, *supra*, at 948. The College did not, however, enjoy the right to freely alienate the property. *Id.*

If a lessee that enjoys full subleasing and removal rights does not qualify as an “owner” for property tax purposes because it is not at liberty to fully alienate the property, then I cannot conclude this applicant-lessee, who enjoys only restricted rights of assignment, alienation, encumbrance, sale and removal can qualify as such an “owner.” This is especially true where, as here, the lease terms that govern rights to personal property, fixtures, alterations and improvements fail to provide applicant with any significant rights of possession or control.

In substance, these provisions state that all fixtures situated on the subject property are property of the Bank, as are all improvements and alterations paid for with proceeds from the Certificates. Although the precise nature of these “alterations and improvements” is not disclosed in the record, a schedule attached to the lease (Applicant Ex. No. 2) reveals that the combined face value of all the Certificates is \$2,000,000.00. Thus, the Bank without question retains ownership of substantial property improvements which, it is reasonable to conclude, include permanent structural improvements to the subject property.

The lease provides the Bank with remedies, including re-entry and inspection, to enforce its rights to these improvements. Absent lease provisions to the contrary, I take

administrative notice that Article IX of the Illinois Code of Civil Procedure (735 ILCS 5/1-101, *et seq.*) provides that the Bank may enforce its landlord's interest in the subject property through commencement of appropriate forcible entry and detainer proceedings.¹³ Consequently, it is the Bank, and not the applicant that ultimately maintains control over such fixtures and improvements as well as the leased property as a whole.

On the other hand, applicant retains control only over: (a) any of its own equipment or personal property that it places on the subject property; and, (b) any property not paid for with proceeds from the Certificates. Control over the former is not indicative of "ownership" for present purposes because such property already belongs to the applicant, and its removal does not alter the subject property.

Furthermore, this record fails to disclose either the identity or the value of any property not purchased with proceeds from the Certificates. Absent this information, I am unable to discern what, if any, significance should be placed on applicant's capacity to control such property. Therefore, applicant, which bears the burden as to all elements of its exemption claim, (People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)), has failed to carry its burden in this respect.

Applicant does nevertheless pay real estate taxes as part of its obligation to pay "Additional Rentals." However, liability for real estate taxes is but one of the many factors that determines "ownership" for property tax purposes. Furthermore, the primary monetary benefits that flow from this lease benefit the Bank, in the form of rental

13. The specific provisions relating to forcible entry and detainer are found in 735 ILCS 5/9-101 through 5/9-321.

receipts, and the third party investors, in the form of federal tax benefits. Thus, taking all relevant factors into account for a fair reading of the lease document as a whole (Forest Preserve District of DuPage County v. Department of Revenue, *supra*), the most I can conclude is that applicant's status as "owner" of the subject property is doubtful at best.

All doubtful matters that arise in exemption cases must be resolved in favor of taxation as a matter of law. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968). Accordingly, pursuant to Victory Christian Church v. Department of Revenue, *supra*, I conclude that the subject property does not qualify for exemption under the pertinent statutes, 35 ILCS 200/15-35 and 15-135, because it is owned by a private entity, the Bank. Therefore, the fact that the Bank leases this property to a tax exempt entity, the applicant-school district, that is obligated to use the property for "school" related purposes under terms of the lease, does not alter any of the preceding conclusions. Victory Christian Church v. Department of Revenue, *supra*; Wheaton College, *supra*.

C. Lease for Profit

1. Lease Provisions

This lease is also ultimately one that violates the statutory proscriptions against leasing or other use with a view to profit. *See*, 35 ILCS 200/15-35, 15-135. The third party investors/Certificate holders derive pecuniary return from the lease because of the numerous lease provisions that prohibit the applicant from taking any action that would prevent the investors from excluding whatever distributions they receive from the interest component of Base Rentals from their respective gross incomes pursuant to 26 U.S.C.A §103.

Applicant argues that, notwithstanding the above, this lease is not one for profit because one of its stated purposes is to enable applicant to purchase the subject property and any improvements it may construct thereon. Applicant Ex. No. 2. This, however, is not the sole stated purpose of the lease, which recites, in pertinent part, that:

This lease is executed in part *to induce the purchase by others* of the Certificates and for the further securing of the Certificates, and, accordingly, as long as any Certificates are outstanding, *all respective covenants and agreements of the parties herein contained are hereby declared to be for the benefit of the owners from time to time of the Certificates and the [Bank in its capacity as] Trustee* only in accordance with the provisions of the Trust Agreement. The Lease shall not be deemed to create any right in any person who is not a party (other than the permitted successors and assigns of a party) and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto), *except in each case the owners from time to time of the Certificates and the Trustee.* (emphasis added).

Id.

This statement creates a conflict as to whether the lease is truly simply a financing device for the benefit of the applicant or part of a more complex series of business transactions that ultimately enable the Bank and third party investors to receive pecuniary returns in the form of rental receipts and federal tax benefits.

The italicized statement that the lease “is executed in part *to induce the purchase by others* of the Certificates” implies that the lease is not simply a financing device. Furthermore, the overall lease structure is, at best, inconsistent with such a device because it permits “others” (i.e. non-exempt, third party investors) to receive federal tax benefits that are directly attributable to “Distributions” paid from interest on the Certificates that the investors purchase. Therefore, one must examine the terms and

conditions under which these investors receive such “Distributions” in order to determine whether this lease is one “for profit.”

Applicant did not submit the trust agreement that sets forth these terms and conditions into the record. Absent this critical evidence, I must resolve any residual doubts as to whether this lease is in fact one “for profit,” in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

Moreover, I take administrative notice that the Bank is a commercial financial institution that operates in various locations throughout the greater Chicagoland area. As such, it is not unreasonable to assume that the Bank undertook the transaction at issue in this case, wherein it is *both* the “owner” for property tax purposes and the lessor that receives substantial rental payments from the applicant, in the normal course of conducting its business as a commercial financial institution. Consequently, the transactional relationship between applicant and the Bank is inherently “for profit” because it is one conducted as part of an arm’s length business transaction.

Applicant sought to alter the above conclusions by attempting to introduce the affidavit of a bank employee as Applicant Ex. No. 4. Tr. p. 35. This affidavit was nonetheless excluded on grounds of hearsay pursuant to appropriate objections made by the Department and the Board.¹⁴ *Id.* Accordingly, the record is glaringly devoid of legally

14. It is briefly noted that applicant offered this affidavit because the Bank employee would not testify without issuance of an appropriate subpoena. Tr. p. 35. Although Department regulations permit me to issue subpoenas under certain circumstances, (86 Ill. Admin. Code, ch. I, §200.145), and the applicant could have requested a continuance for purposes of obtaining an appropriate subpoena (86 Ill. Admin. Code, ch. I, §200.160), the applicant failed to avail itself of either of these remedies prior to commencement of the evidentiary hearing. *Id.* Therefore, admission of the affidavit would have deprived the Board and the Department of their rights to cross-examine the affiant. Accordingly, I excluded the affidavit on grounds of hearsay.

competent evidence which proves that the lease is anything but an arm's length business transaction between applicant and the bank.¹⁵

Based on the above, I conclude that the lease is one "for profit" both as to the third party investors and the bank. Therefore, the subject property would not qualify for exemption under Sections 15-35 and 15-135 even if applicant qualified as the "owner" thereof.

2. Policy Considerations

The above analysis would be incomplete without some discussion establishing why the particular facts presented herein justify requiring a public taxing body, such as the applicant-school district, to pay real estate taxes on the subject property.

Public policy generally disfavors taxation of public taxing bodies. United States v. Hynes, et al., 20 F.3d 1437 (7th Cir. 1994). At the same time, however, the General Assembly has unequivocally proscribed any public or private entity, including a school district, from receiving the economic benefits of tax exemption if that entity uses real estate "with a view to profit." *See*, 35 ILCS 200/15-35, 35 ILCS 200/15-135. *See also*, 35 ILCS 200/15-40;¹⁶ 35 ILCS 15-65;¹⁷ People ex. rel. Baldwin v. Jessamine Withers

15. *See also*, discussion of People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981), *infra*, at 26-30.

16. Section 15-40 of the Property Tax Code, 35 ILCS 200/15-40, states, in relevant part, that:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and *not leased or otherwise used with a view to a profit*, is exempt...[.]

35 ILCS 200/15-40 (emphasis added).

Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

These policies often come into conflict in cases where practical business realities or legal constraints prevent an otherwise exempt entity from obtaining ownership of real estate in its own name. Although our courts have struggled with this conflict in the context of private (Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill. App.3d 73 (1st Dist. 1989); Cole Hospital v. Champaign County Board of Review, 113 Ill. App.3d 96 (4th Dist. 1983)) and public (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) (“Goodman”); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) (“Booker”)), entities, the cases involving public entities are most relevant for present purposes.

The basic operational facts of Goodman and Booker are substantially identical: two tax-exempt public universities (the University of Illinois in Goodman; Southern Illinois University in Booker) were subject to statutory debt limitations that made it legally impossible for them to incur whatever long-term financing was necessary to purchase the properties in question. Goodman, *supra*, at 366, 368; Booker, *supra*, at 1067. These prohibitions did not apply to the respective Foundations, which obtained

17. Section 15-65(a) of the Property Tax Code, 35 ILCS 200/15-65, states, in relevant part, that:

200/15-65. Charitable Purposes

§ 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and *not leased or otherwise used with a view to profit*:

- (a) institutions of public charity.

appropriate financing for the acquisition of, and held legal title to, each of the properties. Goodman, *supra*, at 366, 368; Booker *supra*, at 1063, 1066.

The Foundations leased these properties to the respective universities, which ultimately controlled their day-to-day operations. Goodman at 366, 368; Booker at 1062. However, neither of the Foundations received any profit from the operation of these properties, all of which were used for student housing or other university-related purposes. Goodman at 369, 371-372; Booker at 1066.

The county collector in Goodman argued that the properties in question should not be exempt in part because they were used to produce income. Goodman, *supra*, at 375. The court nonetheless disagreed, noting that “[a]ll the income or revenue received by the Foundation is devoted to the basic purpose of the buildings.” *Id.* Thus:

The collector’s assertion that although legal title is in the Foundation “there is no trust created whereby the income from the properties is being used for an educational purposes” is not a correct statement, or interpretation of the facts. The record demonstrates that all income from the properties is used to maintain or operate them for educational purposes and to discharge obligations, which, alone, can assure the continued availability of these properties for educational use.

Id.

The same can not be said in this case, for the Base Rentals that this applicant pays are used to discharge obligations that cause non-exempt, third party investors to receive pecuniary profit in the form of federal tax deductions. Furthermore, because of the specific pecuniary interest sought by these third party investors, the applicant cannot use the subject property in any manner that it chooses. Accordingly, this particular subject

35 ILCS 200/15-65(a) (emphasis added).

property is quite distinct from the properties at issue in Goodman because it is ultimately investment property for the benefit of the non-exempt bank and third party investors.

The inherently commercial nature of investment property violates the statutory proscriptions against use for profit contained in Sections 15-35 and 15-135. Moreover, the benefits of the property tax exemption set forth in Section 15-35 are expressly reserved for duly qualified: (a) “schools” in the case of Section 15-35; and, (b) “school districts and community colleges” in the case of Section 15-135. 35 ILCS 200/15-35, 15-135. Therefore, private investors, such as those who profit from the lease at issue herein, are not the statutorily intended beneficiaries of the property tax exemptions set forth in either of these provisions. Therefore, the properties in which they invest are not subject to exemption under the reasoning set forth in Goodman.

In addition, the titleholder in this case is a commercial bank. As such, its functions and purposes as a for profit financial institution are quite distinct from the “wholly non-profit” Foundations that held title to the properties at issue in Goodman and Booker. Goodman, *supra*, at 365; Booker, *supra*, at 1064.

Both Foundations were organized for purposes of enabling their respective Universities to acquire and manage their affairs relative to real estate and other similar assets. *Id.* Specifically, the organizational documents of the Foundation in Goodman recited, *inter alia*, that it was authorized to “act without profit as trustee of educational or charitable trusts” for the benefit of the University of Illinois. Goodman, *supra*, at 366.

The organizational documents of the Foundation in Booker stated, in relevant part, that it was to act “in a manner specified by the Board of Trustees of Southern Illinois University” as the “business agent” for that Board with respect to the

“acquisition, management and leasing of real property and buildings.” Booker, *supra*, at 1064. They further provided that the Foundation was to exercise these powers under direction of a governing board that consisted in part of various high-ranking university officials, including the university president or his designee. *Id.* at 1064-1065. Based on these provisions, the Goodman and Booker courts concluded that the respective universities exercised sufficient direction and control over the Foundations so as to place equitable ownership of the properties in question in the universities. Goodman, *supra*, at 366, 372, 375; Booker, *supra*, at 1071.

In contrast, this record contains absolutely no evidence establishing that the applicant exercises any degree of direction and control over the operations of the Bank, which is the named titleholder of the subject property. Rather, the record suggests that the applicant-lessee and the Bank-lessor share nothing more than a conventional business relationship.

The existence of such a relationship provides further evidence that the lease currently at issue is, in fact, one for profit. This factor, combined with the federal tax benefits received by third party investors under the lease, ultimately distinguish this case from Goodman and Booker. However, notwithstanding any factual or legal distinctions between the cases, there is absolutely no provision or precedent in Illinois law that allows for the exemption of commercial investment property. Therefore, the type of property at issue herein simply is not subject to exemption under Sections 15-35 and 15-135.

Based on Goodman and Booker, it is evident that schools can arrange for financing in a manner that would allow property tax exemption. The financing method employed in this instance does not provide such a method for the reasons discussed

above, that is, chiefly because for profit entities are the intended recipients of financial benefits and the legal owner herein is a for profit commercial bank.

More importantly, this lease rents real estate under terms and conditions that create numerous restrictions which serve only to protect the non-exempt pecuniary interests of third party investors and the Bank. None of these restrictions benefit the applicant in any way. Indeed, many of the restrictions, such as those that deny applicant the ability to alienate the property in a full and free manner, are to applicant's detriment because they effectively prevent applicant from exercising critical indicia of "ownership" over the subject property. Wheaton College, *supra*. Accordingly, from economic, legal and practical points of view, this lease clearly subordinates applicant's acquisitional and "ownership" interests in the subject property to financial and business interests in the leasing enterprise held by non-exempt entities.

Neither Goodman nor Booker presented a scenario wherein the acquisitional interest of a duly constituted public taxing body was subordinated in any way to the interest of a third party. Rather, the facts in Goodman and Booker plainly indicated that the respective Foundations were to act strictly as transactional fiduciaries for the public Universities they served. Goodman, *supra*, at 336; Booker, *supra*, at 1064. As such, the courts clearly regarded the pecuniary and other interests of such Foundations in the properties as being minimal when compared to those of the respective Universities. *Id.*

The same cannot be said here because both the Bank and the third party investors derive substantial financial interests and benefits from the terms and conditions of the lease. These interests, in turn, provide the Bank and the investors with business opportunities to maximize their respective returns from the leasing enterprise. Because

the lease creates these opportunities, it enables the investors and the Bank to “profit” by furthering their own financial interests. Consequently, the lease does not make either the Bank or the investors mere transactional fiduciaries for the applicant. I conclude this lease is, in fact, one “for profit.”

Sections 15-35 and 15-135 expressly bar exemption where real estate is leased for such purposes irrespective of applicant’s status as a public taxing body. Therefore, the mere fact that applicant is a duly constituted public taxing body does not shield it from liability for any real estate taxes levied against its interest in the subject property.

III. Exemption under Section 15-35(e)

Applicant also argues that the subject property qualifies for exemption under Section 15-35(e) of the Property Tax Code. This “leaseback” provision states, in substance, that property otherwise qualifying for exemption under Section 15-35 will not lose that exempt status if, for purposes of obtaining necessary financing, the school district: (a) “leases or otherwise transfers the property to another for which or whom property is not exempt[;]” and then, (b) “enters into a leaseback or other agreement that directly or indirectly gives the school district a right to use, control and possess the property.” 35 ILCS 200/15-35(e).

Like all statutes exempting real estate from taxation, Section 15-35(e) must be strictly construed, with all questions and debatable issues resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). In the present context, this means that applicant must faithfully adhere to the narrow set of legislatively prescribed requirements for obtaining a property tax exemption under Section 15-35(e).

Those requirements, set forth above, first mandate that the subject property must otherwise qualify for exemption under Section 15-35. The subject property does not otherwise qualify for exemption under Section 15-35 because the applicant is not the “owner” of this property for property tax purposes and the property is ultimately leased “with a view to profit.”

Second, counsel for the Department and counsel for the Board correctly point out that Section 15-65(e) is phrased in the active voice. Thus, the phrase “leases or otherwise transfers” must be interpreted as indicative of the General Assembly’s intent that the school district actually owns the property *before* it proceeds to lease or otherwise transfer the property to a non-exempt entity, such as the bank.

This interpretation is correct because it comports with the legal definition of the term of art “leaseback,” which is as follows:

Leaseback. Transaction whereby transferor sells property and later leases it back. In a sale-leaseback situation, for example, R would sell property to S and subsequently lease such property from S. Thus, R becomes the lessee and S the lessor.

Black’s Law Dictionary, 6th Edition, (1990).

From this definition, it is apparent that the General Assembly intended that, in order for a school district to exempt leased property under Section 15-35(e), the school district must exercise *bona fide* “ownership” rights by first making what would otherwise be a disqualifying transfer of its ownership interest. The applicant-school district cannot make this legislatively required initial transfer unless it holds some type of “ownership” interest that allows the school district to alienate the property at will. Thus, there can be

no second, subsequent “leaseback” transaction unless the school district first exercises its “ownership” rights by transferring the property to a non-exempt entity.

This record fails to disclose that the applicant-school district ever transferred the subject property to the Bank *prior to* entering into the lease agreement. The conclusion I must make is, therefore, that the Bank became the owner of the property from a seller separate, distinct and foreign to the applicant. Consequently, the initial transfer that the General Assembly prescribed as a prerequisite to exemption under Section 15-35(e) did not occur in this case. It is, therefore, apparent that this applicant did not adhere to the first of the legislative requirements for obtaining a property tax exemption under Section 15-35(e).

All of these statutory requirements must be strictly construed in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Accordingly, I am not at liberty to apply Section 15-35(e) to factual scenarios that do not conform to the one that the General Assembly has plainly mandated for application of that provision. Because this case does not present that specific factual scenario, the subject property does not qualify for a property tax exemption under Section 15-35(e). Therefore, applicant’s reliance on this provision is misplaced.

IV. Summary

The Illinois Constitution allows for the exemption from real estate tax of school district property, but requires that such property be owned and used by the district. With that knowledge, the Illinois legislature exempted school district property, requiring not

only that it be owned by the school district and used for school purposes, but that the property cannot be “sold or leased or otherwise used with a view to profit.”

In addition, the legislature also enacted a law restricting the availability of school districts to fund purchases of real estate. Recognizing, perhaps, that the legal restrictions placed on school districts would be such that school property would lose the property tax exemption the legislature intended for some, but obviously not all, of this property, the legislature enacted Section 15-35(e) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*, 15-35(e).

This “leaseback” provision sets forth a specific method by which school districts can obtain necessary acquisitional financing in a manner that allows them to obtain a property tax exemption for real estate they purchase. Here, however, the applicant failed to follow what the legislature required of it so as to assure that the subject property qualifies for the tax exemption. Because Illinois courts have uniformly directed that exemption statutes be strictly construed, the requested tax exemption must be denied. Accordingly, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by DuPage County Parcel Index Number 05-26-306-007 not be exempt from 2000 real estate taxes under Sections 15-35 and 135 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

Date: 5/13/2003

Alan I. Marcus
Administrative Law Judge